

ORDINANCE NO. 1862

AN ORDINANCE ~~OF~~ THE CITY COUNCIL OF THE CITY OF LODI
RESCINDING DEVELOPMENT AGREEMENT PERTAINING TO THE
DEVELOPMENT ~~OF~~ 151 ACRES LOCATED ON THE WEST SIDE ~~OF~~
LOWER SACRAMENTO ROAD BETWEEN THE WOODBRIDGE
IRRIGATION DISTRICT CANAL AND VINE STREET (WESTSIDE
PROJECT) (DEVELOPMENT AGREEMENT GM-05-002)

=====

BE IT ORDAINED BY THE CITY COUNCIL ~~OF~~ THE CITY OF LODI AS FOLLOWS:

SECTION 1. The Lodi City Council passed Ordinance No. 1794 approving a Development Agreement covering the following property:

Westside Project: 151 acres within the Westside Project area located on the west side of Lower Sacramento Road between the Woodbridge Irrigation District canal and Vine Street (Assessors Parcel Numbers 029-380-05, 027-040-01, 027-040-020, and 027-040-030).

SECTION 2. Frontier Community Builders ("Frontiers"), the sole party to the above referenced Development Agreement, requested that the agreement be rescinded by letter of May 16, 2012, a copy of which is attached hereto and incorporated by reference. However, Frontiers Citizens for Open Government and the City entered into a settlement agreement dated December 4, 2007 ("settlement Agreement"), the obligations of which were incorporated into the Development Agreement. This ordinance shall not terminate any of the obligations set forth in the Settlement Agreement. Moreover, the Settlement Agreement shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 3. The City Council hereby finds that termination of the Development Agreement is in the best interest of the City to ensure that any construction is subject to the new impact mitigation fee program, and to eliminate conditions in the Development Agreement that could present barriers to housing construction in the current economy.

SECTION 4. The City Council hereby finds that the termination of the Development Agreement is consistent with the General Plan land use designation and the zoning for the proposed Development.

SECTION 5. The City Council hereby adopts Ordinance No. 1862 rescinding the Development Agreement by and between the City of Lodi and Frontier Community Builders. However, the Settlement Agreement shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 6. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

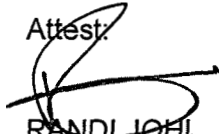
SECTION 7. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 19th of September, 2012


JOANNE MOUNCE
Mayor

Attest:

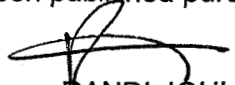

RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

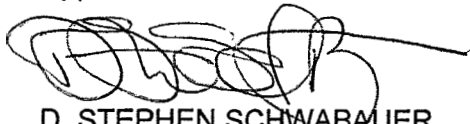
I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1862 was introduced at a regular meeting of the City Council of the City of Lodi held August 15, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held September 19, 2012, by the following vote:

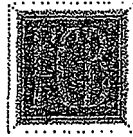
AYES: COUNCIL MEMBERS – Johnson, Katzakian, Nakanishi, and Mayor Mounce
NOES; COUNCIL MEMBERS – None
ABSENT: COUNCIL MEMBERS – Hansen
ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1862 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


RANDI JOHL
City Clerk

Approved as to Form:


D. STEPHEN SCHWABAUER
City Attorney



FCB HOMES

May 16, 2012

Mr. Rad Bartlem
City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

Re: Westside and Southwest Gateway Development Agreements -
Request for Termination

Dear Rad,

Last **April**, 2011, I sent you a letter formally requesting termination of the Westside and Southwest Gateway Development Agreements (see attached). The letter followed nearly **ten** months of regular meetings with City Staff and their consultants working on Lodi's Impact Mitigation **Fee Program (IMFP)** update. We were convinced then that the Westside **and** Southwest Gateway properties should be included in the IMFP **and** the Development Agreements terminated. Now, over a year later, the IMFP update is nearly complete, **and** the Westside **and** Southwest Gateway properties are an integral part of the updated IMFP. Clearly, then, it is time to move forward to cancel the old Westside and Southwest Gateway Development Agreements and establish **an** economic framework for residential development to proceed within the current City limits.

At your request, I will outline below the main reasons we feel the Development Agreements should be cancelled.

1. The Development Agreements did not address the actual impacts resulting from new residential development.

When the Westside and Southwest Gateway projects were moving through the entitlement process, the City's existing impact fee program - originally adopted in 1991 - **had** not been **updated for 15** years. **While the fees** had been periodically increased over time, **many** of the underlying assumptions about program funding had changed and it was those old fee programs that provided the **basis for the** Agreements. Furthermore, other fees were included in the Agreements, some of which bore little or no relationship to growth impacts from the Westside **and** Gateway projects.



10100 TRINITY PARKWAY, SUITE 420 STOCKTON, CALIFORNIA 95219
209-957-8112 FAX 209-957-3618 WWW.FCBWOMES.COM



Now, nearly six years later, the City **has** the cumulative benefit of precise **plans** for the Westside and Southwest Gateway and a new General **Plan**. The **City's** Staff is also approaching *the* end of a two year comprehensive study of growth impacts **via** the IMFP' which include the Westside and Southwest Gateway properties. Their work, along with the Council's ultimate approval, will result in **an** updated, tailored IMFP. The new **IMFP** will be a far better and more accurate way to mitigate impacts from both the Westside and Gateway projects **in** comparison to the mitigation **sought** by the Agreements.

2. The Development Agreements have a fifteen year term. were never implemented and cannot be completed before they expire.

The national, state and local housing markets were **at** historic levels when the Development Agreements were approved **in 2006**. The fifteen year term of the Agreements seemed reasonable at the time given the active **market** conditions. However, the **market has since** plummeted to historic lows. Furthermore, City Staff, consultants, **and** developers are not expecting new residential development to even begin for another two to three years. By that time, **the** Development Agreements will only have approximately seven years remaining before they expire. **This** is less **than** half the time **that** was deemed appropriate under the best of market conditions and will simply not be sufficient **time** to complete these projects. At a minimum, **the** Development Agreements need to be renegotiated to account for **this** fact alone. However, as noted, it **would** be more accurate and efficient to put **the** entire City under one (updated) IMFP. Having to renegotiate the Development Agreements, regularly monitor compliance, **and** account for all funds and programs separate from the IMFP would be time consuming and an **unnecessary** financial burden for everyone involved.

3. The Development Agreements required predetermined lump sum payments for certain fees that cannot be financed without a robust and consistent housing market.

Historically, the **City's** IMFP **has** been designed to be a "pay-as-you-go" system. **This** allowed the pace of development to **mirror** the acceleration or decline of the housing market. The proposed updated IMFP will likewise operate on a "pay-as-you-go" basis. This is a more sustainable way to manage growth, particularly in a community like Lodi - where the long term residential growth rate is relatively slow. Development in Westside **and** Southwest Gateway **will** likely occur in phases by multiple development interests. While this is consistent with how development in Lodi has occurred for many years, **it makes** the payment of **large, lump sums** on a predetermined schedule virtually impossible to finance.

Development Agreements **with** lump **sum** payments work best on large scale projects expected to be completed in a predictable fashion. They can even **work** effectively on small projects when the completion can be reasonably forecasted. However, in a community like Lodi, this structure will not **work** effectively on larger scale areas of development over longer (less economically predictable) periods of time.

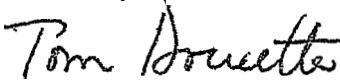
Summary

While the issues outlined above are not exhaustive, they highlight several important factors which underscore the need to terminate the Westside and Southwest Gateway Development Agreements. Alternatively, these Development Agreements could be renegotiated, but *that* should be weighed **against** the inclusion of these projects in the updated IMFP program.

The Agreements were executed **during an** unprecedented "Housing Bubble" fueled by the "Irrational Exuberance" of a dysfunctional financial system. These dynamics no longer exist and will not return in our lifetime. The **housing** market, **as** well as **the** overall economy, **is** struggling to find its footing following **one** of the worst recessions in history. Fortunately, the City **has** moved on **and** set a course to **plan** for sustainable future growth base on realistic assumptions.

The Westside and Southwest Gateway projects **will** be a major component of the City's planned growth plans for the next ten to fifteen years. With this in **mind**, it is our belief that it will be more **efficient**, balanced **and** productive to utilize the updated IMFP for the Westside and Southwest Gateway projects once it is adopted by the **City** Council.

Sincerely,

A handwritten signature in cursive script, reading "Tom Doucette".

Thomas P. Doucette
President